In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-981

CHARLES W. RAMSEY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the District of Columbia, petitioner was convicted of making a false declaration before a grand jury, in violation of 18 U.S.C. 1623(a). He was sentenced to imprisonment for a term of one to four years. The court of appeals affirmed without opinion (Pet. App. A). Petitioner contends that his testimony did not constitute a violation of the statute because, while objectively false, he "subjectively" considered it to be true.

The declaration that the jury found to be false was petitioner's denial before the grand jury that he had ever had an apartment at a specified address (a matter relevant to the grand jury's investigation of possible violations of the Controlled Substance Act, 21 U.S.C. 801, *et seq.*). It was both stipulated and admitted by petitioner that he

had in fact rented an apartment at that address under an assumed name (see Pet. 9). Testifying in his own defense, he claimed that he considered his denial to be truthful because he interpreted the question to ask whether he had had the apartment under his own name (see Pet. 11-12). The case was submitted to the jury with an instruction that it had to determine whether petitioner in fact believed at the time that he appeared before the grand jury that his denial was truthful (see Pet. 15).

The gist of petitioner's contention here is that the trial jury was bound, as a matter of law, to accept the truthfulness of his explanation for giving testimony to the grand jury that was objectively false. There was no reason, however, why the trial jury could not determine, as its verdict shows that it did, that the explanation amounted to no more than a rationalization for conscious lying. The inquiry put to petitioner did not ask for an evaluation, as in *United States* v. *Lattimore,* 127 F. Supp. 405 (D.D.C.), affirmed *per curiam*, 232 F.2d 334 (C.A. D.C.); it was neither imprecise, as in *Galanos* v. *United States,* 49 F.2d 898 (C.A. 6), nor ambiguous, as in *United States* v. *Wall,* 371 F.2d 398 (C.A. 6), the cases relied upon by petitioner. Rather, it asked precisely and simply whether petitioner had ever had an apartment at a specified address. He replied no, although he well knew he was the person who had rented the apartment, but under an assumed name (Pet. 11). The context of the question gave no reason for confusion on his part, and the jury properly rejected his sophistic rationale for his false answer. Petitioner's answer, moreover, was responsive to the question and directly false, rather than unresponsive and

false only by negative implication, as in *Bronston* v. *United States*, 409 U.S. 352.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

MARCH 1975.